

# EXHIBIT 94

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF TENNESSEE

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3 NIKKI BOLLINGER GRAE, Individually and  
4 on Behalf of All Others Similarly Situated,

5 Plaintiff,

6 vs. Case No. 3:16-cv-02267

7 CORRECTIONS CORPORATION OF AMERICA, et al.,

8 Defendants.

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11  
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13  
14 CONFIDENTIAL

15 Video Recorded Deposition of:

16 JOHN BAXTER

17 Taken on behalf of the Plaintiff

18 December 19, 2019

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20  
21  
22  
23 Reported by:

24 Jenny Checuga, LCR, RPR

25 Job No. 10064037

## A P P E A R A N C E S

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\* \* \*

JOHN BAXTER,

was called as a witness, and having first been duly  
sworn, testified as follows:

EXAMINATION

QUESTIONS BY MR. FORGE:

Q. Good morning, sir.

A. Good morning.

Q. Could you please state and spell your name  
for the record?

A. Yes. My name is John Douglas Baxter,  
J-O-H-N, D-O-U-G-L-A-S, B-A-X-T-E-R.

Q. Do you prefer Dr. Baxter or Mr. Baxter?

A. Either -- either is fine.

Q. So Mr. Baxter, have you ever been deposed  
before?

A. Yes, I have.

Q. Approximately how many times?

A. I've been deposed a couple of times in  
personnel matters and have given testimony as an  
expert witness years ago in a federal case.

Q. Once as an expert?

A. Yes.

Q. How many years ago was that?

1 and two of those have multiple parts in them.

2 BY MR. FORGE:

3 Q. Three of those have multiple parts, right?

4 A. I'm sorry?

5 Q. Three of those have multiple parts, correct?

6 A. Yes. Pardon me, three, correct.

7 MR. FORGE: Next is 216.

8 (WHEREUPON, a document was marked as  
9 Exhibit Number 216.)

10 BY MR. FORGE:

11 Q. Does Exhibit 216 appear to be a true and  
12 correct copy of a notice of concern dated  
13 September 23, 2014, from the Bureau of Prisons to Joe  
14 Pryor, the warden at Cibola?

15 A. Yes, it does.

16 Q. One of those areas of concerns identified is  
17 human resources; do you see that?

18 A. I do.

19 Q. And do you see that with regard to health  
20 services, that the staffing levels at Cibola fell  
21 below 85 percent of the minimum staffing requirement  
22 for the months of July and August- -

23 A. Yes.

24 Q. -- 2014?

25 A. I see that.

1 Q. Fair to say that staffing was always a  
2 challenge at these BOP facilities?

3 A. Not in all of their facilities. In the case  
4 of Cibola, in this specific case, there were  
5 challenges. Many of the staff who worked in the  
6 facility lived in the Albuquerque area, which is  
7 about an hour-and-15-minute drive. And to add other  
8 context, as we could identify staff willing to come  
9 on, there was a government clearing process that  
10 those staff had to go through before the Bureau would  
11 clear them to work. And so any vacancy becomes a  
12 challenge, not only in finding a person to fill the  
13 role, but also then getting them through a clearance  
14 process that may take up to six months.

15 And so depending on the number of people, if  
16 there's turnover in a facility, there may be times  
17 when the staffing level would dip below 85 percent  
18 and we would work to address that.

19 Q. And my question was -- I should focus more on  
20 Cibola for now.

21 Staffing health services was always a  
22 challenge at Cibola, correct?

23 A. Staffing of health services was a challenge  
24 at Cibola, whether nursing staff or, at some points,  
25 provider staff, yes.

1 MR. FORGE: Next one is going to be

2 Exhibit 217.

3 (WHEREUPON, a document was marked as

4 Exhibit Number 217.)

5 BY MR. FORGE:

6 Q. Does that appear to be a true and correct  
7 copy of an e-mail -- you have to help me with the  
8 pronunciation of this name, an e-mail from --

9 A. Ashley Odubeko.

10 Q. Can you please spell that for for the record?

11 A. O-U -- excuse me. O-D-U-B-E-K-O.

12 Q. To Natasha Metcalf?

13 A. Correct.

14 Q. Does it appear to be a true and correct copy  
15 of an e-mail from Ms. Odubeko to Ms. Metcalf from  
16 June 5, 2015?

17 A. Yes.

18 Q. Including attachments?

19 A. It does include attachments, yes.

20 Q. Do you know Ms. Odubeko?

21 A. I've met her, I did not interact frequently  
22 with her, but she was part of the team working with  
23 Ms. Metcalf.

24 Q. What do you understand her job to be -- to be  
25 at that time?

1 document consist of two pages, first one Bates number

2 225, second one Bates number ending 226?

3 A. Yes.

4 Q. The top of the first page says, "Cibola

5 discussion"?

6 A. Yes.

7 Q. Do you recognize this document?

8 A. I recognize it as one that I have seen,

9 although I don't recall who -- who would have

10 produced the document, but it looks like it reflects

11 a number of the areas that we were monitoring closely

12 and steps that we were putting in place to address

13 the underlying issues.

14 Q. Do you think this -- I'll just represent to

15 you that, at least as produced, you were indicated as

16 the custodian of this record.

17 A. Yes, yeah.

18 Q. Do you believe this is a document you would

19 have created or received from somebody else?

20 A. Yeah, it looks very much like one that I

21 could have created as a summary of talking points to

22 have a discussion around, yes.

23 MR. FORGE: Next one's going to be

24 Exhibit 222.

25

1 (WHEREUPON, a document was marked as

2 Exhibit Number 222.)

3 BY MR. FORGE:

4 Q. Does Exhibit 222 appear to be a copy of a two  
5 e-mail e-mail chain that concludes with an e-mail  
6 from Don Houston to you, Mr. Lappin, Jorge Dominicis?

7 A. Dominicis.

8 Q. Dominicis, dated July 26, 2016, including  
9 attachments?

10 A. Yes, it does.

11 Q. This -- first of all, who is Mr. Houston?

12 A. Don Houston is -- or at that time was the  
13 president of Correct Care Solutions prisons division.  
14 Correct Care Solutions was a medical subcontractor  
15 that provides care in a numbers of correctional  
16 settings around the country.

17 Q. I'll just refer to them as CCS, if that's  
18 okay with you?

19 A. Yes, that's fine.

20 Q. Did CCA contract with CCS to provide medical  
21 care at any of the BOP facilities we've been  
22 discussing today?

23 A. At Cibola, yes, we did contract with CCS.

24 Q. At any of the other BOP facilities did you  
25 contract with CCS?

1 A. No other -- other than Cibola, no.

2 Q. What was the scope of CCS's responsibility  
3 with respect to Cibola?

4 A. To provide the full range of care that was  
5 expected under the contract.

6 Q. When did that contract commence?

7 A. Our contract with them, I believe, began in  
8 2016, in January.

9 Q. Who made the decision to effectively  
10 outsource the health services function at Cibola?

11 A. That was a decision that was reached by  
12 CoreCivic executive leadership, certainly with my  
13 input and involvement.

14 Q. Which members of the executive leadership at  
15 CCA?

16 A. It would have -- certainly Harley Lappin  
17 would have been involved, Damon Hininger. Other  
18 members of the executive staff would have been  
19 briefed related to the decision.

20 Q. Who else?

21 A. That's --

22 Q. When you say other members of the executive  
23 staff, who?

24 A. So anyone at the senior executive level, the  
25 senior vice-president level.

1 Q. Who would that include?

2 A. So that would have included our executive  
3 vice-president over HR, executive vice-president over  
4 finance.

5 Q. Who are those individuals, give me some  
6 names?

7 A. So David Garfinkle, Kim White, Lucibeth  
8 Mayberry would have been the executive vice-president  
9 over real estate. I don't know whether this decision  
10 necessarily would have gone to her or not, but  
11 generally this kind of thing would be talked about  
12 among our executive team.

13 Q. From your perspective, why was the decision  
14 made ultimately to outsource the health services at  
15 Cibola?

16 A. Because CCS had a much more robust ability to  
17 recruit, certainly in that state. They already had a  
18 presence in the Albuquerque area and employed a  
19 number of people working in a correctional hospital,  
20 working in the large county jail in the Albuquerque  
21 area. And as a result of that, we wouldn't be at --  
22 you know, competing against each other to try to  
23 identify and bring to bear additional staff resources  
24 to address turnover and the like.

25 So not only were they viewed as a trusted

1 A. Yes.

2 Q. In Mr. Hall's e-mail he notes that "We were  
3 successful in getting the repeat deficiencies in  
4 health services reduced from six to four, but they  
5 did not remove the significant finding;" do you see  
6 that?

7 A. Yes, I do.

8 Q. And although that is literally true, the  
9 reality is that change was just a matter of combining  
10 different deficiencies into one deficiency that we  
11 discussed earlier about the immunizations, right?

12 A. Yes, I recall that, yes.

13 Q. So it's still the same number of deficiencies  
14 repeated, but the way they were combined changed,  
15 right?

16 MR. GLENNON: Objection, mischaracterizes  
17 his testimony.

18 THE WITNESS: The way -- my understanding  
19 is the way they counted them reflected what their  
20 prior practice was instead of a change in their audit  
21 tool that they had implemented.

22 BY MR. FORGE:

23 Q. So it was a counting issue, rather than a  
24 deficiencies issue?

25 MR. GLENNON: Same objection.

1 THE WITNESS: Correct.

2 BY MR. FORGE:

3 Q. So if you turn to -- does the first Bates  
4 number on your exhibit end 648?

5 A. Yes.

6 Q. If you turn to Bates page -- well, 649, does  
7 this appear to be a true and correct copy of a letter  
8 from the BOP to Warden Bedard of Eden that reflects  
9 the agency's response to the Contractor's dispute of  
10 the CFM report?

11 A. Yes, it does appear to be.

12 Q. If you look at Page 5 of that letter, which  
13 is Bates Page 653, do you see under staffing it  
14 states that "At the time of the review, August 5th  
15 through 7th, 2014, CFM reviewing staff were informed  
16 by the HSA contractor personnel and BOP on-site staff  
17 that the on-site physician quit his full-time  
18 position in December 2013. Since then he only  
19 performed on-site services on occasional (not every)  
20 weekends. Additionally, your response verifies that  
21 an on-site full-time physician was only recently  
22 hired August 11, 2014."

23 Do you see that?

24 A. Yes, I do.

25 Q. Is that paragraph accurate, as far as you

1 know?

2 A. As far as I know, yes, it is.

3 Q. So does that mean that there were  
4 approximately eight months without a doctor on site  
5 most of the time?

6 MR. GLENNON: Objection, foundation.

7 THE WITNESS: Certainly it reflects that  
8 we did not have a full-time person in that role for  
9 about eight months. The relative number of hours  
10 that were contributed would have varied based on the  
11 doctor's availability in coming back to us on  
12 weekends.

13 BY MR. FORGE:

14 Q. Well, it says, "He only performed on-site  
15 services on occasional weekends," right?

16 A. That's correct.

17 Q. So that still leaves a majority of the time  
18 of a week in which there's no doctor available,  
19 right?

20 A. Yes.

21 Q. And the next under -- next paragraph it says,  
22 "It was also determined during the review that nine  
23 other positions were vacant, six nurses, a dentist, a  
24 medical records clerk, and a dental assistant, as  
25 indicated on a document obtained during the review."

1 Is that accurate?

2 A. I trust that it is as stated.

3 Q. Next paragraph it says, "Your claim to be  
4 unaware of documentation discrepancies is  
5 contradicted by this CFM review findings, which were  
6 reported to you in detail."

7 Do you have any understanding as to why it is  
8 that CCA responded with a defense that was  
9 contradicted by the CFM review findings?

10 MR. GLENNON: Objection, foundation,  
11 assumes facts.

12 THE WITNESS: I can't speculate without  
13 seeing the response and seeing the review, working  
14 papers.

15 BY MR. FORGE:

16 Q. Turning to Page 657, which is Page 9 of the  
17 actual letter, do you see the repeat deficiency for  
18 health services medical management of inmate prior to  
19 death?

20 A. Yes.

21 Q. Do you see that the final CFM decision was  
22 that the repeat deficiency is supported and remains  
23 as originally written?

24 A. Yes.

25 Q. And it goes on to say, "The incident you

## 1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE

3 COUNTY OF SUMNER

4 I, JENNY CHECUGA, Licensed Court Reporter,  
5 with offices in Nashville, Tennessee, and Registered  
6 Professional Reporter, hereby certify that I reported  
7 the foregoing video recorded deposition of JOHN  
8 BAXTER by machine shorthand to the best of my skills  
9 and abilities, and thereafter the same was reduced to  
10 typewritten form by me.

11 I further certify that I am not related to  
12 any of the parties named herein, nor their counsel,  
13 and have no interest, financial or otherwise, in the  
15 outcome of the proceedings.

16 Further, that if the foregoing pertains to  
17 the original transcript of a deposition in a federal  
18 case, before completion of the proceedings, review of  
19 the transcript [ X ] was [ ] was not requested.

20 I further certify that in order for this  
21 document to be considered a true and correct copy, it  
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Services.

Dated: January 7, 2020

JENNY CHECUGA, LCR, RPR  
Licensed Court Reporter (TN)  
Notary Public State of Tennessee

My Notary Commission Expires: 5/22/2023  
LCR #690 - Expires: 6/30/2020